

Flood risk and land use decision tree

The attached decision tree shows the application of the recent suite of flood legislation affecting land use decisions and liability.

The legislation reforms the Reclamation Board, broadens and expedites flood mapping and links land use decision making to potential local liability.

The legislation does not prohibit approval of development projects. It does require that in order to approve development projects, the land use authority shall update the applicable general plan land use designation with the state provided flood maps and updated levee protection (and risk) maps.

Local liability is contingent on the updated maps, general plans and ensuring the land use decision is informed by such maps. The liability potential is dependent on a process requiring a claim against the state and a discretionary decision by the state whether or not the local jurisdiction will share in the liability.

The statutory time limits may not be achieved in which case the status quo of land use decision making remains. Required notice of scheduled mapping is due by December 2008. This is essentially a scope of work with schedule of task by DWR. Notice due to property owners within floodplain and levee protection zones may be based on current data and need not reflect updated information. These are annual reports and will reflect updated data as developed. Such information may be used for local land use decision making and will establish the "trail of reasoning" for city or county. Additional reports on cost of bring flood protection facilities up to new performance standards or existing performance standards will also be part of administrative record for local decision making.

The statutory time frame for developing the 100-200-year flood management plan for the Central Valley is 2012 and the statutory time for updating the local general plans is 2014. The legislation is silent on the event of potential challenges to such plans which will be based on and utilize FEMA (ACOE) protocol for establishing floodplain and extent of flooding. There is precedent for such challenge that made it all the way to the U.S. Congress. However, the draft plan would "inform" the city or county and the option exist of amending the local general plans even if the flood plan is challenged. These would be factors for discretionary decisions and be part of the administrative record for liability.

Motivation for meeting the statutory time frames is based on the state's interest of minimizing loss of life and structural damage and liability for flood damage. Residents may be motivated to ensure timely completion of the process for similar reasons. The development community expects certainty and to the extent city and county decision makers exercise caution, the whole community of state, local and private interest would drive the completion of mapping and Plans. In the event these motivating conditions are weak, it would seem caveat emptor rules.

The fundamentals of the reform legislation are better flood risk map information, separation of former reclamation board from the Department of Water Resources, updated Central Valley Plan clear trail of reasoning for approving development with flood risk and local jurisdiction exposure to liability in the event of flooding.

